

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

GUARDSMARK LLC

Employer

and

Case 7-RC-22970

PLANT PROTECTION ASSOCIATION NATIONAL

Petitioner

APPEARANCES:

Edward R. Young and William B. Levy, Attorneys, of Memphis, Tennessee, and
John Matchulat, Attorney, of Nashville, Tennessee, for the Employer
Frank Guido, Attorney, of Redford, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

¹ Both parties filed briefs, which were carefully considered.

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.²

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Issue

The Employer is a nationwide provider of security services. Petitioner seeks an election among approximately 35 security officers employed by the Employer at the Dearborn, Michigan sites of customer Ford Land Commercial Properties. The sole issue is whether Section 9(b)(3) of the Act prohibits Petitioner from being certified as the representative of the unit it seeks to represent. The Employer contends that Petitioner may not be certified because, in a separate bargaining unit not encompassed by the instant petition, Petitioner admits non-guards to membership. Petitioner claims that it is entitled to be certified herein because all of its members are statutory guards. There is no evidence that the unit sought in the instant petition contains employees other than guards.

The Employer's entire case rests on the status of employees denominated fire officers level II (FO-II) under a 2005 - 2008 collective-bargaining agreement between the Employer and Petitioner covering the Employer's protective services

² The Employer contends that the hearing officer erred by rejecting 280 separate daily activity reports purportedly prepared by the Employer's union-represented employees stationed in a Ford Motor Company plant in Brook Park, Ohio. The Employer's sole witness at the hearing had no supervisory responsibility over the asserted preparers of the reports, nor any other personal knowledge with respect to their preparation. The Employer, which was granted a two-day adjournment at the commencement of the hearing on April 5 in order to prepare for the issue at hand, stated at the hearing on April 7 that it needed an additional adjournment of five days before it could present a witness to authenticate the proposed reports. There was no explanation as to why an Employer official with personal knowledge of the proposed reports was absent when the reports were introduced, or why such a person could not be summoned before the lapse of five more days. Neither in its offer of proof at the hearing, nor in its post-hearing brief, has the Employer explained how the rejected reports differ in content or implication from the 73 daily activity reports, prepared on the identical form template, that were properly authenticated and admitted into the record. The hearing officer's refusal to postpone the hearing further to allow for tardy authentication of the proposed reports, and her rejection of the sought records as cumulative and unauthenticated, were appropriate rulings and are hereby affirmed.

officers at various Ford installations throughout the United States. The labor agreement also refers to fire officers level IIb, a classification that presently has no incumbents, and fire compliance officers level IIa, who are represented not by Petitioner, but by a different union. Thus, FO-IIs are the only fire protection officers, and asserted non-guards, under Petitioner's labor contract. The Employer presented evidence that five of an unspecified but presumably larger contingent of FO-IIs are members of Petitioner.

I find, in agreement with Petitioner, that the FO-IIs are statutory guards.

Facts

Like all other security officers of the Employer, FO-IIs are issued, and bound by, the Employer's basic manual entitled General Orders, Regulations, and Instructions for Uniformed Personnel. Paragraph 1 of the General Orders states, "The purpose of your employment is to aid in keeping peace and order, preventing vandalism and other crimes, preventing fire and preventing loss of the client's property." The section on Report Writing emphasizes that the duty of all security officers is to prepare daily activity reports and, as necessary, unusual incident reports, because "Your primary duty as a security officer is to closely observe your surroundings as you perform your duties at the client facility." The paragraph entitled Emergency Evacuation states: "The security officer's primary role is to be alert to security threats, assess risks and to notify his/her supervisor and/or the client of impending hazards to employee safety and property."

The Employer's sole witness, Vehicle Operations Manager Donald Sarnacki, testified that all security officers, including FO-IIs, are responsible for protecting persons and property at customer Ford's sites; enforcing Ford's rules regarding use of property; stopping unsafe practices, property rules violations, and misconduct such as theft and fighting; and reporting all such incidents to Ford.

Specific FO-II duties, set forth in the parties' collective bargaining agreement, comprise the full set of tasks assigned to mobile patrol officers level I, a classification whose bona fide guard status is undisputed. Both mobile patrol officers level I and FO-IIs monitor the site for safety concerns and suspicious activity; respond to and report on such observations; render customer assistance (for example, escorting Ford employees to their cars late at night, and locating Ford employees for visitors); lock and unlock gates and doors; and keep patrol vehicles in working order.

Manager Sarnacki testified that FO-IIs do not issue Ford parking citations, erect traffic control devices, or resolve traffic safety issues, all of which are jobs

contractually assigned to the mobile patrol officer level I. However, the record establishes that Sarnacki does not directly supervise any FO-IIs. FO-II Michael Eddy, who works for the Employer at Ford's world headquarters, testified that he and other FO-IIs at his site regularly undertake the traffic-related tasks just noted.

In addition to performing the work of mobile patrol officers level I, FO-IIs also execute fire protection tasks. These include inspecting fire systems and equipment; engaging in incipient firefighting (for example, extinguishing cigarettes smoldering in ashtrays); responding as part of Ford's team to fire and hazmat (hazardous material) emergencies; issuing hot work permits whenever an activity may create a spark; monitoring air quality and issuing confined space permits; handling fire impairments (designating equipment as out of service and providing for alternative safety measures while equipment undergoes repairs); and protecting against falls.

As revealed by a Ford fire protection bulletin introduced by the Employer, inspections and tests of fire systems and equipment normally occur no more frequently than weekly. Most checks are performed less often. For example, drains are tested each calendar quarter; water flow alarms, bimonthly; sprinkler control valves, weekly or monthly depending upon the type of control; fire hoses, monthly; hydrants, semi-annually; proprietary alarm circuits, annually; heat and smoke detector circuits, semi-annually; fire doors, monthly. While FO-IIs visually check fire equipment and periodically operate it to assure its viability, they do not normally make equipment repairs, which is the province of customer Ford's unionized tradesmen and outside contractors.

Manager Sarnacki testified that FO-IIs' inspection and testing duties occupy 95 percent of their work time. This estimate was contradicted by the testimony of FO-IIs Michael Eddy and Frank Kahsar, as well as the 73 FO-II daily activity reports introduced by the Employer. Eddy, assigned to Ford's world headquarters, stated that his non-fire security work comprised from 50 to 75 percent of his day. All but one of the daily activity reports in the record were prepared by Eddy during the period January to March 2006. They reveal that, if anything, Eddy overestimated the amount of his fire-related work. Kahsar, assigned to Ford's manufacturing plant in Batavia, Ohio, testified that he finishes his weekly fire inspection chores in one hour, and devotes one hour each day to the completion of his monthly inspection duties. Thus, exclusive of fire emergencies, the frequency of which was not revealed in the record, Kahsar performs all of his fire-related work in approximately 6 hours during a 40-hour week.

Eddy's typical work day begins with attending roll call with the other security officers. The bulk of his shift is spent unlocking vehicles and doors, patrolling the site in a vehicle marked Security Patrol, escorting and offering other customer assistance, making reports of observations, and watching a lobby computer screen. Like foot patrol officers, he passes an electronic wand over access points to show that they have been checked. He also issues parking citations and handles traffic safety problems. Because of a recent spate of vehicular burglaries, Eddy and the other FO-IIs at Ford world headquarters take turns spending one full shift on parking lot patrol duty.

Kahsar described his work day similarly. He roams the Batavia plant, disengages locks, checks doors, and turns off lights. He writes reports regarding traffic incidents, thefts, and missing property. He inspects vehicles.

FO-IIs wear the same basic uniforms as do other security officers. Some wear Employer-issued coveralls with the word "Security" emblazoned on the back, to protect their clothing when running certain tests. The same coveralls also are available to other security officers, as shown by the testimony of level I officer Richard Shearer, whose post is Ford's Wayne Assembly Plant.

All security officers receive 40 hours of basic security training. Topics include hazardous materials awareness, hazardous communications, first aid and CPR, fire extinguisher selection and use, incident management system awareness, diversity and zero tolerance training, pedestrian safety, and driver/personnel and burden carrier techniques. To reach FO-II status, security officers complete 156 additional training hours on such subjects as hazardous materials operations, incipient fire fighting, fire systems testing and maintenance, hot work permits, fire impairments, incident management, confined space permits and air monitoring, confined space rescue, and rescue from fall protection.

Like other security officers, FO-IIs use two-way radios to communicate with their base station and plant emergency responders. They are subject to the same hiring preconditions as all other security officers, including fingerprints and criminal background checks. FO-IIs report to the same site supervisor who oversees the other security officers on that shift. According to the 2005 – 2008 labor agreement, FO-IIs earn \$13 per hour, while level I officers earn \$10. None of the Employer's security officers carry weapons or conduct frisks.

FO-IIs occasionally substitute for absent level I officers. Likewise, level I officers occasionally perform level II fire work. Level I officer Richard Shearer, who has completed most of the level II fire training, fills in once or twice monthly in a "fire post." At such times, he inspects fire equipment, performs pump tests,

impairs systems, and performs incipient firefighting. Even as a regular level I officer, Shearer has issued hundreds of hot work permits. He testified that other level I officers at Wayne assembly also carry out fire-related tasks as needed.

Analysis

The Board is reluctant to apply Section 9(b)(3) so strictly that guards will be deprived of representation. The noncertifiability of an allegedly mixed guard union must be shown by clear and definitive evidence. *Rapid Armored Corp.*, 323 NLRB 709, 711 (1997); *Children's Hospital of Michigan*, 317 NLRB 580, 581, 583 (1995), enfd. sub nom *Henry Ford Health System v. NLRB*, 105 F.3d 1139 (6th Cir. 1997); *Elite Protective & Security Services*, 300 NLRB 832 (1990); *Burns Security Services*, 278 NLRB 565, 568 (1986).

As the Board observed in *Boeing Co.*, 328 NLRB 128, 130 (1999), employers commonly give employees security-related duties for only a portion of their working hours. The central concern is not a numerical accounting of the percentage of time they spend on such duties, but rather the specific nature of the duties themselves. Accord *J. C. Penney Co.*, 312 NLRB 32, 33 (1993). Employees will be deemed statutory guards as long as their guard duties are more than a minor or incidental part of their overall responsibilities. *Rhode Island Hospital*, 313 NLRB 343, 346-347 (1993).

The record establishes that FO-IIs spend the preponderance of their time carrying out traditional guard functions. They have an overarching duty to enforce Ford's property and safety rules. They take actions to compel compliance with the rules. They report wrongdoing. They participate in security rounds and patrols. They monitor and control access to portions of the premises. They are trained in security procedures. They wear apparel that identifies them as security guards. The performance of these conventional security tasks comprises far more than a minor part, but rather the great majority, of their work day.

The Board has not hesitated to find fire protection personnel to be guards under similar circumstances. In *M. K. Morse Co.*, 302 NLRB 924, 924, 927 (1991), employees were deemed guards because they toured the plant to safeguard it from intruders and prevent property damage, as well as to protect it from fires. In *United Technologies Corp.*, 245 NLRB 932 (1979), as here, guards with the requisite specialized training performed fire protection duties in addition to their core responsibilities of enforcing rules, issuing tickets, and writing incident reports. The percentage of time spent in fire work was not controlling, and the firemen were found to be guards. *Id.* at 932-933.

In *Reynolds Metals Co.*, 198 NLRB 120 (1972), the employer delegated extra guard duties to its existing complement of firemen. Although the disputed employees still functioned as traditional firemen about 75 percent of their time, at least 25 percent of their day was devoted to enforcing rules, admitting persons to the premises, standing gate duty, and patrolling the parking lot. Because rules enforcement was an underlying and significant part of their job, the firemen were deemed guards. *Id.* at 120-121.

The Employer relies on *Burns Security Services*, 300 NLRB 298 (1990), enf. denied 942 F.2d 519 (8th Cir. 1991), in support of its contention that FO-IIs are not statutory guards. In that case, the firefighters in dispute enforced fire and safety rules. Consistent with prior decisions, the Board held that the enforcement of such rules did not warrant a finding of guard status. The Board went on to state, however, that it recognized there were a number of cases in which it found firefighters to be statutory guards, citing, among other cases, *United Technologies*, supra, and *Reynolds Metals*, supra. The Board noted that in those cases the firefighters' duties encompassed traditional police and plant security functions as well as enforcement of fire and safety regulations. That is the case here, as well; FO-IIs' duties include traditional plant security functions.

The instant record unequivocally supports the finding that FO-IIs are guards. Even if it did not, however, it is unclear whether the Employer could now be heard to question their statutory guard status. Less than one year ago, the Employer entered into a 2005 – 2008 labor contract, recognizing Petitioner as the exclusive bargaining representative of a nationwide unit of security officers, including FO-IIs. There is no showing that the duties of FO-IIs have undergone any recent changes. The Board cautions against collateral litigation of the guard status of a stranger employer's employees, because the exercise invites an in-depth examination of every unit represented by a petitioning guard union in any representation proceeding, and thus encourages burdensome litigation. *Rapid Armored Corp.*, supra. The bell of prudence sounded by the Board in *Rapid Armored Corp.* is joined here by the call of equity. The Employer is not contesting the guard status of employees of a stranger employer. It is contesting the guard status of certain of its own employees soon after negotiating a contract that includes those employees in a guard unit. Equity would seem to disfavor such an abrupt and unprovoked mid-term change in position on the critical question of Petitioner's certifiability to represent guards.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.³

All full-time and regular part-time security officers, including ingress and egress officers, commercial building officers, commercial road control officers, and site supervisors, employed by the Employer at Ford Land Commercial Properties' Dearborn, Michigan sites of Fairlane Office Center, Regent Court, Fairlane Plaza, FTDC and Fairlane Club, ITEK, Corporate Crossings, 500 Town Center, Visteon Executive Floor, and VPO; but excluding office employees, clerical employees, supervisors as defined in the Act, and all non-guard employees.⁴

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 1st day of May, 2006.

(SEAL)

"/s/[Stephen m. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

³ The unit was stipulated to by the parties.

⁴ Although the parties did not so stipulate, it is uncontested that the agreed-upon bargaining unit consists solely of statutory guards. In addition, the record and post-hearing briefs reveal that the stipulated unit is limited to the nine sites of Ford Land Commercial Properties listed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

PLANT PROTECTION ASSOCIATION NATIONAL

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **May 8, 2006**. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **May 15, 2006**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.